Certain Teed Corporation *and* Glass, Pottery, Plastics & Allied Workers International Union. Case 10-CA-18724

21 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 15 July 1983 Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Certain Teed Corporation, Athens, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Based on a credibility determination, the judge found that the Respondent interrogated job applicant Griffith about his union activities in violation of Sec. 8(a)(1) of the Act. In resolving the conflict in testimony between Griffith and Personnel Supervisor Rachor, the judge noted that the Respondent's supervisors had asked similar questions in the past (*Certain-Teed Insulation Co.*, 251 NLRB 1561 (1980)), and that Rachor admitted that the Respondent's employee handbook contained antiunion comments somewhat similar to those Griffith attributed to her. The Board finds it unnecessary to rely on these factors because the other reasons on which the judge relied are sufficient to uphold his credibility finding.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge. This case was heard in Athens, Georgia, on April 12, 1983. The complaint which issued on December 27, 1982, and is predicated on a charge which was filed on November 17, 1982, originally alleged that Respondent engaged in several independent 8(a)(1) violations and in violations of Section 8(a)(5) of the Act. Subsequently, during the hearing, a settlement involving all of the parties was approved as to all the 8(a)(5) allegations. As a result all the 8(a)(5) allegations were amended out of the complaint. The General Counsel alleges that Respondent engaged in Section 8(a)(1) violations by interrogating an employee on November 30, 1982, and an applicant for employment on November 12, 1982, and by threatening an employee with discharge on November 30, 1982.

On the entire record and from my observation of the witnesses, and after due consideration of the briefs filed by General Counsel, the Charging Party, and Respondent, I make the following

FINDINGS OF FACT[1]

A. *Alex Griffith*

Alex Griffith testified that he applied for a job at Respondent through the state employment security office and that he was interviewed by Personnel Supervisor Noreen Rachor on November 12, 1982. In regard to the complaint allegations, Griffith testified that his interview with Rachor included the following:

> A. And we talked about my last job which was at Owens of Georgia. She asked me did Owens have a union. And my reply was yes and no because we had one and it got voted out.
>
> And she asked me what did I feel about the union what did I feel about the union. I said that I was in support—a staunch supporter of the union.
>
> And the conversation went on and finally—well, a few minutes after that, it ended, and she said, "Well, I'll get in touch with you." And I never heard from her.
>
> Q. Do you recall if she stated anything about the union to you?
>
> A. Well, yes. She explained to me that the Company had a union and the Company was unhappy with the union and they wanted to eliminate the union and they didn't want it there. And she began to tell me—well, we didn't get into the problems that the company and the union was having, but I got the impression that—
>
> . . . .
>
> Well, she told me that the company didn't want the union there.

Noreen Rachor was called by Respondent. Rachor admitted that she conducted job interviews during November 1982. Rachor also testified that she recalled Alex Griffith. However, according to Rachor, she did not specifically recall what was discussed during her interview with Griffith. Rachor specifically denied that she made any reference to the Union during her interview with Griffith and she denied asking Griffith how he felt about a union.

[1] The complaint alleges, the answer admits, and I find that Respondent is a corporation with an office and place of business located in Athens, Georgia, where it is engaged in the manufacture of insulation material and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. The complaint also alleges, the answer admits, and I find that Glass, Pottery, Plastics & Allied Workers International Union is a labor organization within the meaning of Sec. 2(5) of the Act.

1. Discussion

Respondent attacked Griffith's credibility by pointing out confusion in Griffith's testimony regarding the sequence of subjects covered in his interview with Rachor. Respondent is correct. Griffith's recollection as to the sequence of subjects covered in the interview differed at the hearing from his testimony as to the sequence in his December 13, 1982, affidavit to the Regional Office of the NLRB. However, as to those differing versions, both versions included interview subjects which are not in dispute. Specifically, Griffith confused in his two versions placement during the interview of an explanation by Rachor of the available job and an explanation by Griffith of his last employment.

Rachor admitted that she did not recall what was said during Griffith's interview. But she testified that her interviews with applicants routinely include questions as to the applicant work history and an explanation by Rachor of the available job.

Obviously, Griffith's confusion demonstrates that his recollection of the interview has changed somewhat since he gave an affidavit in December 1982. However, the record does not show that his recollection has been materially affected as to the substance of the interview. In that regard his affidavit—which was received in evidence—appears to corroborate his testimony at the hearing.

Griffith testified with particularity as to the interview whereas Rachor admittedly did not recall the particular interview. Although Rachor denied that she interrogated applicants about their union activities and stated that she had been trained and instructed not to ask questions of that type, I notice that similar questions have been asked its employees by Respondent's supervisors in the past. (See *Certain-Teed Insulation Co.*, 251 NLRB 1561 (1980).) Additionally, Rachor admitted that Respondent's handbook to employees contains antiunion comments which are somewhat similar to those which Griffith attributed to her. Rachor admitted that she knew of the 1980 union activities among Respondent's Athens employees. Finally Rachor admitted that on occasion when applicants asked her about a union she told them, "We do not currently have a union at Certain Teed, Athens."[2] In view of the above, the record as a whole, and my observation of the demeanor of Griffith and Rachor, I am persuaded that Griffith's testimony is more reliable.

2. Finding

Griffith's testimony demonstrates that he was interviewed in the Certain Teed offices under conditions which would have a tendency to coerce. Griffith was applying for a job. He was interrogated about his union involvement at his previous place of employment and about his personal feelings about a union. Rachor pointed out that Respondent was trying to rid itself of a union. I find that the interview included interrogation in violation of Section 8(a)(1) of the Act. (See, e.g., *U.S. Industries*, 258 NLRB 208 (1981), enfd. 701 F.2d 452 (5th Cir. 1983).)

B. *William Deal*

William Deal, who is currently employed by Respondent as a grade 4 utility operator, testified that he bid and received a downgrade from a grade 6 position on the recommendation of his supervisor, David Smith. Following Deal's downgrade he had a conversation with Supervisor Smith around November 30, 1982, in a supervisor's office:

> A. Well, Mr Smith just wanted to know—that he had overheard some fellow employees talking and mention the fact that I was for the union and before I had been against. And he just wanted to know why—the reason that I had changed my mind.
>
> And I indicated to Mr. Smith that I had been approached by some fellow employees that were for the union. And Mr. Smith had been on the job and observed my performance and he had thought that my performance was such—the Grade 6 Operator's job that is—that I should down-bid or—he already given me a verbal warning and a written warning on the job performance. And the next step would be termination if my performance did not improve. And according to Mr. Smith, my performance did not improve. So, he advised me to down-bid—down-grade. And also, he said, "Ed,—
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> Q. Did Mr. Smith say anything to you about—
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> A. Well, he mentioned—I was going to mention the fact that he would like to offer his reasons why someone employed at the Certain Teed plant should not be for the union, that he thought that it would be in my best interest to be against the union and that he would want to know the reasons and he would just like to give me his rebuttal for that.
>
> Q. Did you say anything to him about the union, whether you supported it or not?
>
> A. I mentioned that I was not—I thought it was in my best interest to be for the union. And I gave no other reasons for that, but Mr. Smith also stated that he thought he was doing me a favor, which I'm sure he probably did, to allow me to down-bid. And he thought that the union had been in actual operation or in effect at the company at that time that I would surely have been terminated.
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> Q. Was that a statement he made to you?
>
> A. Yes.

Supervisor David Smith, who was called by Respondent, testified:

> Q. After he had downbid—you have heard Mr. Deal's testimony here today of the conversation you had with him?
>
> A. Yes.
>
> Q. Did you come to have a conversation with him?
>
> A. Yes, sir.
>
> Q. In which the union was mentioned?

[2] The Union has been certified as representative of Respondent's Athens employees. A test of that certification is now pending before the U.S. 11th Circuit Court of Appeals.

A. Yes, sir.

Q. Do you recall Mr. Deal testified that it occurred, I believe, on the 30th of November? Do you recall when the conversation occurred?

A. Not the date, exactly, no. I recall some of the conversation.

Q. Where was the conversation?

A. It was in my office.

Q. Was there anyone else present?

A. No, sir.

Q. Could you tell us what was said in that conversation, please?

A. I heard out on the floor that he was for the union and I was concerned about bringing him down to see why and to give me a chance to rectify his decision before he made a definite decision to hear my side and the company's. I also asked him to go back out on the floor, to think up any questions or anything that he wanted to think about and to come back and let me see if I could answer them before he made his final decision of what he was for, the union or the company.

Q. Did Mr. Deal say anything in response to your discussion?

A. He was not very responsive—yes or no—or he'd nod his head in that form. We spent about ten minutes in my office and it was mostly a one-sided conversation with me.

Q. What do you mean by one-sided conversation?

A. Well, I was doing all the talking trying to get the reason for the way he felt and trying to give my reasons just why I thought he should listen to me before he made up his decision as far as the union or the company—to give me a chance.

Q. What, if anything, was said about termination?

A. That was—if I recall correctly, there was something about termination.

Q. What was said, as you recall?

A. If he did not improve—we're talking abut the Grade 6. The grade 4, the conversation on that—if we had a union, he probably would not have a job. I didn't say he'd be terminated. I didn't threaten him, I don't think. It was just like a conversation you would have with one of your friends, I think.

Q. Do you recall particularly what was said?

A. Verbatim, no sir, I can't.

Q. Did you ask him, "Do you realize that if we had a union, you would probably have been terminated?"

A. I might have said something like that.

1. Discussion

In view of Smith's admissions, I shall credit his and William Deal's testimony.

2. Finding

David Smith's testimony that Deal "was not very responsive" "it was mostly a onesided conversation with me" illustrates the reluctance of Deal to be involved in a conversation regarding his union feelings. I am persuaded that Deal was interrogated and threatened with loss of his job, in a manner which had a tendency to coerce. Therefore I find that Respondent violated Section 8(a)(1). (See *U.S. Industries, supra.)*

CONCLUSIONS OF LAW

1. Respondent, Certain Teed Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Glass, Pottery, Plastics & Allied Workers International Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating its employees concerning their union activities and threatening its employee with loss of his job if he supported the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record I issue the following recommended[3]

ORDER

The Respondent, Certain Teed Corporation, Athens, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, and coercing its employees in the exercise of rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act by interrogating its employees regarding their union activities and by threatening its employees with loss of jobs if they engage in union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Post at its Athens, Georgia facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that notices are not altered, defaced, or covered by any other material.

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[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT interrogate our employees concerning their union activities.

WE WILL NOT threaten our employees with loss of jobs if they support Glass, Pottery, Plastics & Allied Workers International Union, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees with respect to their exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

CERTAIN TEED CORPORATION